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SENATE BILL 242

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Lidio G. Rainaldi

AN ACT

RELATING TO MOTOR VEHICLES; CLARIFYING RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS; CHANGING PROVISIONS APPLYING TO COMMERCIAL DRIVER'S LICENSES; COMPLYING WITH FEDERAL LAW REGARDING RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS AND PROHIBITED BLOOD OR BREATH ALCOHOL CONCENTRATIONS FOR COMMERCIAL DRIVERS; CREATING A PRESUMPTION THAT A PERSON UNDER TWENTY-ONE IS INTOXICATED WITH A BLOOD OR BREATH ALCOHOL CONCENTRATION OF TWO ONE HUNDREDTHS; REVISING FEES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE MOTOR VEHICLE CODE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-52 NMSA 1978 (being Laws 1989, Chapter 14, Section 1, as amended) is amended to read:

"66-5-52. SHORT TITLE. -- Sections 66-5-52 through ~~[66-5-71]~~ 66-5-72 NMSA 1978 may be cited as the "New Mexico

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1 Commercial Driver's License Act". "

2 Section 2. Section 66-5-54 NMSA 1978 (being Laws 1989,
3 Chapter 14, Section 3, as amended) is amended to read:

4 "66-5-54. DEFINITIONS. -- As used in the New Mexico
5 Commercial Driver's License Act:

6 A. "commerce" means:

7 (1) [~~any~~] trade, traffic or transportation
8 within the jurisdiction of the United States between a place in
9 New Mexico and a place outside of New Mexico, including a place
10 outside of the United States; and

11 (2) trade, traffic [~~and~~] or transportation in
12 the United States that affects any trade, traffic or
13 transportation described in Paragraph (1) of this subsection;

14 B. "commercial motor vehicle" means a motor vehicle
15 or combination of motor vehicles used in commerce to transport
16 passengers or property if the motor vehicle:

17 (1) has a gross combination weight rating of
18 more than twenty-six thousand pounds inclusive of a towed unit
19 with a gross vehicle weight rating of more than ten thousand
20 pounds;

21 (2) has a gross vehicle weight rating of more
22 than twenty-six thousand pounds;

23 (3) is designed to transport sixteen or more
24 passengers, including the driver; or

25 (4) is of any size and is used in the

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1 transportation of hazardous materials, which requires the motor
2 vehicle to be placarded under applicable law;

3 C. "employee" means [~~any~~] an operator of a
4 commercial motor vehicle, including full-time, regularly
5 employed drivers; casual, intermittent or occasional drivers;
6 leased drivers; and independent owner-operator contractors,
7 while in the course of operating a commercial motor vehicle,
8 who [~~are~~] is either directly employed by or under lease to an
9 employer;

10 D. "employer" means [~~any~~] a person, including the
11 United States, a state [~~or~~] and a political subdivision of a
12 state or their agencies or instrumentalities, who owns or
13 leases a commercial motor vehicle or assigns employees to
14 operate such a vehicle;

15 E. "gross combination weight rating" means the
16 value specified by the manufacturer as the loaded weight of a
17 combination vehicle. In the absence of a value specified by
18 the manufacturer, gross combination weight rating shall be
19 determined by adding the gross vehicle weight rating of the
20 power unit and the total weight of the towed unit or units and
21 any load thereon;

22 F. "gross vehicle weight rating" means the value
23 specified by the manufacturer as the loaded weight of a single
24 vehicle;

25 G. "out-of-service order" means a declaration by an

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1 authorized enforcement officer of a federal, state, Canadian,
2 Mexican or local jurisdiction that a driver, a commercial motor
3 vehicle or a motor carrier operation is temporarily prohibited
4 from operating; [~~and~~]

5 H. "railroad-highway grade crossing violation"
6 means a violation of a provision of Section 66-7-341 or
7 66-7-343 NMSA 1978 or a violation of federal or local law or
8 rule pertaining to stopping at or crossing a railroad-highway
9 grade crossing; and

10 [~~H.-~~] I. "serious traffic violation" means
11 conviction of any of the following if committed when operating
12 a commercial motor vehicle:

13 (1) speed of fifteen miles or more per hour
14 above the posted limits;

15 (2) reckless driving as defined by Section
16 66-8-113 NMSA 1978 or a municipal ordinance or the law of
17 another state;

18 (3) homicide by vehicle, as defined in Section
19 66-8-101 NMSA 1978;

20 (4) injury to pregnant woman by vehicle as
21 defined in Section 66-8-101.1 NMSA 1978 or a municipal
22 ordinance or the law of another state; or

23 (5) any other violation of law relating to
24 motor vehicle traffic control, other than a parking violation,
25 that the secretary determines by regulation to be a serious

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1 traffic violation. [A] "Serious traffic violation" does not
2 include a vehicle weight [~~and~~] or vehicle defect violation. "

3 Section 3. Section 66-5-58 NMSA 1978 (being Laws 1989,
4 Chapter 14, Section 7, as amended) is amended to read:

5 "66-5-58. EMPLOYER RESPONSIBILITY. -- [~~No~~] An employer
6 shall not knowingly allow, require, permit or authorize a
7 driver to drive a commercial motor vehicle during [~~any~~] a
8 period in which:

9 A. [~~in which~~] the driver has a driver's license
10 suspended, revoked or canceled by a state, has lost the
11 privilege to drive a commercial motor vehicle in [~~any~~] a state
12 or has been disqualified from driving a commercial motor
13 vehicle;

14 B. [~~in which~~] the driver has more than one driver's
15 license as of the effective date of the provisions of the New
16 Mexico Commercial Driver's License Act; [~~or~~]

17 C. [~~in which~~] the [~~employee~~] driver, the commercial
18 motor vehicle the [~~employee~~] driver is driving or the motor
19 carrier operation of the employer is subject to an out-of-
20 service order; or

21 D. the driver has been convicted of a railroad-
22 highway grade crossing violation. "

23 Section 4. Section 66-5-59 NMSA 1978 (being Laws 1989,
24 Chapter 14, Section 8) is amended to read:

25 "66-5-59. COMMERCIAL DRIVER'S LICENSE REQUIRED. --

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1 A. ~~[No]~~ A person may not drive a commercial motor
2 vehicle unless the person holds and is in immediate possession
3 of a commercial driver's license and applicable endorsements
4 valid for the vehicle the person is driving, except when
5 driving under a commercial driver's instruction permit and
6 accompanied by the holder of a commercial driver's license
7 valid for the vehicle being driven.

8 B. ~~[No]~~ A person may not drive a commercial motor
9 vehicle while the person's driving privilege is suspended,
10 revoked or canceled or while subject to a disqualification or
11 in violation of an out-of-service order.

12 C. ~~[No]~~ A person who is a resident of this state
13 for at least thirty days may not drive a commercial motor
14 vehicle under the authority of a commercial driver's license
15 issued by another jurisdiction.

16 D. A person may not drive a commercial motor
17 vehicle in violation of an out-of service order. "

18 Section 5. Section 66-5-68 NMSA 1978 (being Laws 1989,
19 Chapter 14, Section 17, as amended) is amended to read:

20 "66-5-68. DISQUALIFICATION. --

21 A. The department shall disqualify a person from
22 driving a commercial motor vehicle for a period of not less
23 than one year if the person:

24 (1) refuses to submit to a chemical test when
25 requested pursuant to the provisions of the Implied Consent

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1 Act; or

2 (2) is convicted of a violation of:

3 (a) driving a commercial motor vehicle
4 under the influence of intoxicating liquor or drugs in
5 violation of Section 66-5-68.1 NMSA 1978, Section 66-8-102 NMSA
6 1978, an ordinance of a municipality of this state or the law
7 of another state;

8 (b) leaving the scene of an accident
9 involving a commercial motor vehicle driven by the person in
10 violation of Section 66-7-201 NMSA 1978 or an ordinance of a
11 municipality of this state or the law of another state; or

12 (c) using a commercial motor vehicle in
13 the commission of any felony.

14 B. The department shall disqualify a person from
15 driving a commercial motor vehicle for a period of not less
16 than three years if any of the violations specified in
17 Subsection A of this section occur while transporting a
18 hazardous material required to be placarded.

19 C. The department shall disqualify a person from
20 driving a commercial motor vehicle for life if convicted of two
21 or more violations of any of the offenses specified in
22 Subsection A of this section, or any combination of those
23 offenses, arising from two or more separate incidents, but the
24 secretary may issue regulations establishing guidelines,
25 including conditions, under which a disqualification for life

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1 under this subsection may be reduced to a period of not less
2 than ten years. This subsection applies only to those offenses
3 committed after July 1, 1989.

4 D. The department shall disqualify a person from
5 driving a commercial motor vehicle for life if the person uses
6 a commercial motor vehicle in the commission of any felony
7 involving the manufacture, distribution or dispensing of a
8 controlled substance or the possession with intent to
9 manufacture, distribute or dispense a controlled substance.

10 E. The department shall disqualify a person from
11 driving a commercial motor vehicle for a period of not less
12 than sixty days if convicted of two serious traffic violations
13 or one hundred twenty days if convicted of three serious
14 traffic violations, if the violations were committed while
15 driving a commercial motor vehicle, arising from separate
16 incidents occurring within a three-year period.

17 F. The department shall disqualify a person from
18 driving a commercial motor vehicle for a period of not less
19 than one hundred eighty days nor more than two years if the
20 person is convicted of a first violation of an out-of-service
21 order while transporting hazardous materials required to be
22 placarded pursuant to the federal Hazardous Materials
23 Transportation Act or while operating a motor vehicle designed
24 to transport more than fifteen passengers, including the
25 driver. The department shall disqualify a person from driving

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1 a commercial motor vehicle for a period of not less than three
2 years nor more than five years if, during any ten-year period,
3 the person is convicted of any subsequent violations of out-of-
4 service orders, in separate incidents, while transporting
5 hazardous materials required to be placarded pursuant to that
6 act or while operating a motor vehicle designed to transport
7 more than fifteen passengers, including the driver.

8 G. When a person is disqualified from driving a
9 commercial motor vehicle, any commercial driver's license held
10 by that person is invalidated without a separate proceeding [~~of~~
11 ~~any kind~~] and the driver is not eligible to apply for a
12 commercial driver's license until the period of time for which
13 the driver was disqualified has elapsed.

14 H. The department shall disqualify a person from
15 driving a commercial motor vehicle:

16 (1) for a period of not less than sixty days
17 if the person is convicted of a first violation of a railroad-
18 highway grade crossing violation;

19 (2) for not less than one hundred twenty days
20 if, during any three-year period, the person is convicted of a
21 second railroad-highway grade crossing violation in a separate
22 incident; and

23 (3) for not less than one year if, during any
24 three-year period, the person is convicted of a third or
25 subsequent railroad-highway grade crossing violation in a

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1 separate incident.

2 [H-] I. After disqualifying, suspending, revoking
3 or canceling a commercial driver's license, the department
4 shall, within ten days, update its records to reflect that
5 action. After disqualifying, suspending, revoking or canceling
6 a nonresident commercial driver's privileges, the department
7 shall, within ten days, notify the licensing authority of the
8 state that issued the commercial driver's license.

9 [I-] J. For purposes of this section, the term
10 "convicted" includes a license revocation pursuant to the
11 Implied Consent Act or [the] an implied consent act of another
12 state. "

13 Section 6. Section 66-5-71 NMSA 1978 (being Laws 1998,
14 Chapter 17, Section 5, as amended) is amended to read:

15 "66-5-71. PENALTIES FOR VIOLATION OF OUT-OF-SERVICE
16 ORDERS. --

17 A. A driver who is convicted of violating an out-
18 of-service order shall be subject to a civil penalty of not
19 less than [~~one thousand dollars (\$1,000)~~] one thousand one
20 hundred dollars (\$1,100) or more than [~~two thousand five~~
21 ~~hundred dollars (\$2,500)~~] two thousand seven hundred fifty
22 dollars (\$2,750), in addition to disqualification as provided
23 in Subsection C of this section.

24 B. An employer who is convicted of a violation of
25 Subsection C of Section 66-5-58 NMSA 1978 shall be subject to a

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1 civil penalty of not less than [~~two thousand five hundred~~
2 ~~dollars (\$2,500)~~] two thousand seven hundred fifty dollars
3 (\$2,750) or more than [~~ten thousand dollars (\$10,000)~~] eleven
4 thousand dollars (\$11,000).

5 C. A driver who is convicted of violating an out-
6 of-service order shall be disqualified for:

7 (1) not less than ninety days or more than
8 one year if the driver is convicted of a first violation of an
9 out-of-service order;

10 (2) not less than one year or more than five
11 years if, during any ten-year period, the driver is convicted
12 of two violations of out-of-service orders in separate
13 incidents; and

14 (3) not less than three years or more than
15 five years if, during any ten-year period, the driver is
16 convicted of three or more violations of out-of-service orders
17 in separate incidents. "

18 Section 7. A new section of the New Mexico Commercial
19 Driver's License Act, Section 66-5-72 NMSA 1978, is enacted to
20 read:

21 "66-5-72. [NEW MATERIAL] EMPLOYER PENALTIES FOR RAILROAD-
22 HIGHWAY GRADE CROSSING VIOLATIONS.--An employer who is
23 convicted of a violation of Subsection D of Section 66-5-58
24 NMSA 1978 shall be subject to a civil penalty of not more than
25 ten thousand dollars (\$10,000) for each violation. "

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1 Section 8. Section 66-7-341 NMSA 1978 (being Laws 1978,
2 Chapter 35, Section 445) is repealed and a new Section 66-7-341
3 NMSA 1978 is enacted to read:

4 "66-7-341. [NEW MATERIAL] RAILROAD-HIGHWAY GRADE CROSSING
5 VIOLATIONS--ALL DRIVERS. --

6 A. A person driving a vehicle approaching a
7 railroad-highway grade crossing shall:

8 (1) obey traffic control devices, crossing
9 gates or barriers or the directions of an enforcement official
10 at the crossing;

11 (2) stop not more than fifty feet and not less
12 than fifteen feet from the nearest rail of a crossing if:

13 (a) a train is moving through or
14 blocking the crossing;

15 (b) a train is plainly visible and
16 approaching the crossing within hazardous proximity to the
17 crossing;

18 (c) the sound of a train's warning
19 signal can be heard, indicating that a train is within one
20 thousand five hundred feet of the railroad-highway grade
21 crossing and approaching, although the train may not yet be
22 within sight; or

23 (d) a traffic control device, crossing
24 gate, barrier or light or an enforcement official signals the
25 driver to stop; and

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1 (3) proceed through the railroad-highway grade
2 crossing only if it is safe to completely pass through the
3 entire railroad-highway grade crossing without stopping.

4 B. A person shall not:

5 (1) drive a vehicle through, around or under a
6 crossing gate or barrier at a railroad-highway grade crossing
7 while the gate or barrier is closed or being opened or closed;

8 (2) drive onto the railroad-highway grade
9 crossing and stop; or

10 (3) enter a crossing if the vehicle being
11 driven has insufficient undercarriage clearance to pass over
12 the crossing.

13 C. The penalty assessment for violation of this
14 section is included in Section 66-8-116 NMSA 1978. "

15 Section 9. Section 66-7-343 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 447) is repealed and a new Section 66-7-343
17 NMSA 1978 is enacted to read:

18 "66-7-343. [NEW MATERIAL] RAILROAD-HIGHWAY GRADE CROSSING
19 VIOLATIONS--CERTAIN VEHICLES REQUIRED TO ALWAYS STOP--
20 EXCEPTIONS.--

21 A. Except as set forth in Subsection D of this
22 section, a driver of a vehicle carrying passengers for hire, a
23 school bus carrying school children or a vehicle carrying
24 hazardous materials, radioactive or explosive substances or
25 flammable liquids as cargo or as part of its cargo, before

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1 entering a railroad-highway grade crossing, is required to stop
2 no more than fifty feet and no less than fifteen feet from the
3 nearest rail of the railroad.

4 B. While stopped, the driver shall:

5 (1) look and listen in both directions along
6 the track for an approaching train and for signals indicating
7 that a train is approaching;

8 (2) determine it is safe to proceed completely
9 through the railroad-highway grade crossing before entering it;
10 and

11 (3) set the vehicle in a gear sufficiently low
12 that gears will not need to be shifted before exiting the
13 railroad-highway grade crossing.

14 C. A driver shall not shift gears while in a
15 railroad-highway grade crossing.

16 D. A driver of a vehicle carrying passengers for
17 hire, a school bus carrying school children or a vehicle
18 carrying hazardous materials, radioactive or explosive
19 substances or flammable liquids as cargo or as part of its
20 cargo is not required to stop at:

21 (1) a railroad-highway grade crossing where a
22 police officer directs traffic to proceed;

23 (2) a railroad-highway grade crossing where a
24 stop-and-go traffic light controls movement of traffic;

25 (3) a railroad-highway grade crossing used

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1 exclusively for industrial switching purposes, within a
2 business district as defined in Section 66-1-4.2 NMSA 1978;

3 (4) a railroad-highway grade crossing where
4 use of the railroad has been abandoned and there is a sign
5 indicating that the railroad has been abandoned; or

6 (5) an industrial or spur line railroad-
7 highway grade crossing marked with a sign reading "exempt
8 crossing" that has been designated as exempt by appropriate
9 state or local authorities.

10 E. Penalties for violation of this section are
11 included in Section 66-8-116 NMSA 1978. "

12 Section 10. Section 66-8-102 NMSA 1978 (being Laws 1953,
13 Chapter 139, Section 54, as amended) is amended to read:

14 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
15 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
16 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

17 A. It is unlawful for a person who is under the
18 influence of intoxicating liquor to drive a vehicle within this
19 state.

20 B. It is unlawful for a person who is under the
21 influence of any drug to a degree that renders him incapable of
22 safely driving a vehicle to drive a vehicle within this state.

23 C. It is unlawful for:

24 (1) a person twenty-one years of age or more
25 who has an alcohol concentration in his blood or breath of

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1 eight one hundredths or more [~~in his blood or breath~~] to drive
2 a vehicle within this state; and

3 (2) a person who has an alcohol concentration
4 in his blood or breath of four one hundredths or more to drive
5 a commercial motor vehicle; and

6 (3) a person less than twenty-one years of age
7 who has an alcohol concentration in his blood or breath of two
8 one hundredths or more to drive a vehicle within this state.

9 D. Aggravated driving while under the influence of
10 intoxicating liquor or drugs consists of a person who:

11 (1) has an alcohol concentration of sixteen
12 one hundredths or more in his blood or breath while driving a
13 vehicle within this state;

14 (2) has caused bodily injury to a human being
15 as a result of the unlawful operation of a motor vehicle while
16 driving under the influence of intoxicating liquor or drugs; or

17 (3) refused to submit to chemical testing, as
18 provided for in the Implied Consent Act, and in the judgment of
19 the court, based upon evidence of intoxication presented to the
20 court, was under the influence of intoxicating liquor or drugs.

21 E. ~~Every~~ A person under first conviction pursuant
22 to this section shall be punished, notwithstanding the
23 provisions of Section 31-18-13 NMSA 1978, by imprisonment for
24 not more than ninety days or by a fine of not more than five
25 hundred dollars (\$500), or both; provided that if the sentence

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1 is suspended in whole or in part or deferred, the period of
2 probation may extend beyond ninety days but shall not exceed
3 one year. Upon a first conviction pursuant to this section, an
4 offender may be sentenced to not less than forty-eight hours of
5 community service or a fine of three hundred dollars (\$300).

6 The offender shall be ordered by the court to participate in
7 and complete a screening program described in Subsection H of
8 this section and to attend a driver rehabilitation program for
9 alcohol or drugs, also known as a "DWI school", approved by the
10 bureau and also may be required to participate in other
11 rehabilitative services as the court shall determine to be
12 necessary. In addition to those penalties, when an offender
13 commits aggravated driving while under the influence of
14 intoxicating liquor or drugs, the offender shall be sentenced
15 to not less than forty-eight consecutive hours in jail. If an
16 offender fails to complete, within a time specified by the
17 court, any community service, screening program, treatment
18 program or DWI school ordered by the court, the offender shall
19 be sentenced to not less than an additional forty-eight
20 consecutive hours in jail. Any jail sentence imposed pursuant
21 to this subsection for failure to complete, within a time
22 specified by the court, any community service, screening
23 program, treatment program or DWI school ordered by the court
24 or for aggravated driving while under the influence of
25 intoxicating liquor or drugs shall not be suspended, deferred

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1 or taken under advisement. On a first conviction pursuant to
2 this section, any time spent in jail for the offense prior to
3 the conviction for that offense shall be credited to any term
4 of imprisonment fixed by the court. A deferred sentence
5 pursuant to this subsection shall be considered a first
6 conviction for the purpose of determining subsequent
7 convictions.

8 F. A second or third conviction pursuant to this
9 section shall be punished, notwithstanding the provisions of
10 Section 31-18-13 NMSA 1978, by imprisonment for not more than
11 three hundred sixty-four days or by a fine of not more than one
12 thousand dollars (\$1,000), or both; provided that if the
13 sentence is suspended in whole or in part, the period of
14 probation may extend beyond one year but shall not exceed five
15 years. Notwithstanding any provision of law to the contrary
16 for suspension or deferment of execution of a sentence:

17 (1) upon a second conviction, [~~each~~] an
18 offender shall be sentenced to a jail term of not less than
19 seventy-two consecutive hours, forty-eight hours of community
20 service and a fine of five hundred dollars (\$500). In addition
21 to those penalties, when an offender ~~commits~~ aggravated driving
22 while under the influence of intoxicating liquor or drugs, the
23 offender shall be sentenced to a jail term of not less than
24 ninety-six consecutive hours. If an offender fails to
25 complete, within a time specified by the court, any community

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1 service, screening program or treatment program ordered by the
2 court, the offender shall be sentenced to not less than an
3 additional seven consecutive days in jail. A penalty imposed
4 pursuant to this paragraph shall not be suspended or deferred
5 or taken under advisement; and

6 (2) upon a third conviction, an offender shall
7 be sentenced to a jail term of not less than thirty consecutive
8 days and a fine of seven hundred fifty dollars (\$750). In
9 addition to those penalties, when an offender commits
10 aggravated driving while under the influence of intoxicating
11 liquor or drugs, the offender shall be sentenced to a jail term
12 of not less than sixty consecutive days. If an offender fails
13 to complete, within a time specified by the court, any
14 screening program or treatment program ordered by the court,
15 the offender shall be sentenced to not less than an additional
16 sixty consecutive days in jail. A penalty imposed pursuant to
17 this paragraph shall not be suspended or deferred or taken
18 under advisement.

19 G. Upon a fourth or subsequent conviction pursuant
20 to this section, an offender is guilty of a fourth degree
21 felony, as provided in Section 31-18-15 NMSA 1978, and shall be
22 sentenced to a jail term of not less than six months, which
23 shall not be suspended or deferred or taken under advisement.

24 H. Upon any conviction pursuant to this section, an
25 offender shall be required to participate in and complete,

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1 within a time specified by the court, an alcohol or drug abuse
2 screening program and, if necessary, a treatment program
3 approved by the court. The requirement imposed pursuant to
4 this subsection shall not be suspended, deferred or taken under
5 advisement.

6 I. Upon a first conviction for aggravated driving
7 while under the influence of intoxicating liquor or drugs
8 pursuant to the provisions of Subsection D of this section,
9 as a condition of probation, an offender shall be required to
10 have an ignition interlock device installed and operating for a
11 period of one year on all motor vehicles driven by the
12 offender, pursuant to rules adopted by the bureau. Unless
13 determined by the sentencing court to be indigent, the offender
14 shall pay all costs associated with having an ignition
15 interlock device installed on the appropriate motor vehicles.
16 If an offender drives a motor vehicle that does not have an
17 ignition interlock device installed on the motor vehicle, the
18 offender may be in violation of the terms and conditions of his
19 probation.

20 J. Upon a first conviction for driving while under
21 the influence of intoxicating liquor or drugs pursuant to the
22 provisions of Subsection A, B or C of this section, as a
23 condition of probation, an offender may be required to have an
24 ignition interlock device installed and operating for a period
25 of one year on all motor vehicles driven by the offender,

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1 pursuant to rules adopted by the bureau. Unless determined by
2 the sentencing court to be indigent, the offender shall pay all
3 costs associated with having an ignition interlock device
4 installed on the appropriate motor vehicles. If an offender
5 drives a motor vehicle that does not have an ignition interlock
6 device installed on the motor vehicle, the offender may be in
7 violation of the terms and conditions of his probation.

8 K. Upon any subsequent conviction pursuant to this
9 section, as a condition of probation, a subsequent offender
10 shall be required to have an ignition interlock device
11 installed and operating for a period of at least one year on
12 all motor vehicles driven by the subsequent offender, pursuant
13 to rules adopted by the bureau. Unless determined by the
14 sentencing court to be indigent, the subsequent offender shall
15 pay all costs associated with having an ignition interlock
16 device installed on the appropriate motor vehicles. If a
17 subsequent offender drives a motor vehicle that does not have
18 an ignition interlock device installed on the motor vehicle,
19 the subsequent offender may be in violation of the terms and
20 conditions of his probation.

21 L. In the case of a first, second or third offense
22 under this section, the magistrate court has concurrent
23 jurisdiction with district courts to try the offender.

24 M A conviction pursuant to a municipal or county
25 ordinance in New Mexico or a law of any other jurisdiction,

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1 territory or possession of the United States that is equivalent
2 to New Mexico law for driving while under the influence of
3 intoxicating liquor or drugs, and that prescribes penalties for
4 driving while under the influence of intoxicating liquor or
5 drugs, shall be deemed to be a conviction pursuant to this
6 section for purposes of determining whether a conviction is a
7 second or subsequent conviction.

8 N. In addition to any other fine or fee [~~which~~
9 that may be imposed pursuant to the conviction or other
10 disposition of the offense under this section, the court may
11 order the offender to pay the costs of any court-ordered
12 screening and treatment programs.

13 O. As used in this section:

14 (1) "bodily injury" means an injury to a
15 person that is not likely to cause death or great bodily harm
16 to the person, but does cause painful temporary disfigurement
17 or temporary loss or impairment of the functions of any member
18 or organ of the person's body; and

19 (2) "conviction" means an adjudication of
20 guilt and does not include imposition of a sentence."

21 Section 11. Section 66-8-102.1 NMSA 1978 (being Laws
22 1982, Chapter 102, Section 2, as amended) is amended to read:

23 "66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the
24 complaint or information alleges a violation of Section
25 66-8-102 NMSA 1978, any plea of guilty thereafter entered in

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1 satisfaction of the charges shall include at least a plea of
2 guilty to the violation of one of the subsections of Section
3 66-8-102 NMSA 1978, and no other disposition by plea of guilty
4 to any other charge in satisfaction of the charge shall be
5 authorized if the results of a test performed pursuant to the
6 Implied Consent Act disclose that the blood or breath of the
7 person charged contains an alcohol concentration of:

8 A. eight one hundredths or more if the person
9 charged is twenty-one years of age or older;

10 B. four one hundredths or more if the person
11 charged is driving a commercial motor vehicle; or

12 C. two one hundredths or more if the person charged
13 is less than twenty-one years of age. "

14 Section 12. Section 66-8-110 NMSA 1978 (being Laws 1978,
15 Chapter 35, Section 518, as amended) is amended to read:

16 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
17 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

18 A. The results of a test performed pursuant to the
19 Implied Consent Act may be introduced into evidence in any
20 civil action or criminal action arising out of the acts alleged
21 to have been committed by the person tested for driving a motor
22 vehicle while under the influence of intoxicating liquor or
23 drugs.

24 B. When the blood or breath of the person tested
25 contains:

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1 (1) an alcohol concentration of [~~five one-~~
2 ~~hundredths or~~] less than four one hundredths, it shall be
3 presumed that the person was not under the influence of
4 intoxicating liquor [~~or~~] if the person is at least twenty-one
5 years of age;

6 (2) an alcohol concentration of [~~more than~~
7 ~~five one hundredths~~] at least four one hundredths but less than
8 eight one hundredths:

9 (a) no presumption shall be made that
10 the person either was or was not under the influence of
11 intoxicating liquor, [~~However~~] unless the person is driving a
12 commercial motor vehicle or is under twenty-one years of age;
13 and

14 (b) the amount of alcohol in the
15 person's blood may be considered with other competent evidence
16 in determining whether the person was under the influence of
17 intoxicating liquor;

18 (3) an alcohol concentration of four one
19 hundredths or more and the person is driving a commercial
20 vehicle, it shall be presumed that the person is under the
21 influence of intoxicating liquor; or

22 (4) an alcohol concentration of two one
23 hundredths or more and the person is under twenty-one years of
24 age, it shall be presumed that the person is under the
25 influence of intoxicating liquor.

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1 C. ~~[When the blood or breath of the person tested~~
2 ~~contains an alcohol concentration of eight one hundredths or~~
3 ~~more]~~ The arresting officer shall charge ~~[him]~~ the person
4 tested with a violation of Section 66-8-102 NMSA 1978 when the
5 blood or breath of the person contains an alcohol concentration
6 of:

7 (1) eight one hundredths or more if the person
8 is twenty-one years of age or older;

9 (2) four one hundredths or more if the person
10 is driving a commercial motor vehicle; or

11 (3) two one hundredths or more if the person
12 is less than twenty-one years of age.

13 D. When a person is less than twenty-one years of
14 age and the blood or breath of the person contains an alcohol
15 concentration of two one hundredths or more, the person's
16 driving privileges shall be revoked pursuant to the provisions
17 of the Implied Consent Act.

18 E. The determination of alcohol concentration shall
19 be based on the grams of alcohol in one hundred milliliters of
20 blood or the grams of alcohol in two hundred ten liters of
21 breath.

22 F. A breath test machine certified by the
23 scientific laboratory division of the department of health is
24 presumed to measure the breath sample based on the grams of
25 alcohol in two hundred ten liters of breath.

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1 ~~[F-]~~ G. The presumptions in Subsection B of this
2 section do not limit the introduction of other competent
3 evidence concerning whether the person was under the influence
4 of intoxicating liquor.

5 ~~[G-]~~ H. If a person is convicted of driving a motor
6 vehicle while under the influence of intoxicating liquor, the
7 trial judge shall be required to inquire into the past driving
8 record of the person before sentence is entered in the matter."

9 Section 13. Section 66-8-111 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 519, as amended) is amended to read:

11 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
12 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE. --

13 A. If a person under arrest for violation of an
14 offense enumerated in the Motor Vehicle Code refuses upon
15 request of a law enforcement officer to submit to chemical
16 tests designated by the law enforcement agency as provided in
17 Section 66-8-107 NMSA 1978, none shall be administered except
18 when a municipal judge, magistrate or district judge issues a
19 search warrant authorizing chemical tests as provided in
20 Section 66-8-107 NMSA 1978 upon his finding in a law
21 enforcement officer's written affidavit that there is probable
22 cause to believe that the person has driven a motor vehicle
23 while under the influence of alcohol or a controlled substance,
24 thereby causing the death or great bodily injury of another
25 person, or there is probable cause to believe that the person

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1 has committed a felony while under the influence of alcohol or
2 a controlled substance and that chemical tests as provided in
3 Section 66-8-107 NMSA 1978 will produce material evidence in a
4 felony prosecution.

5 B. The department, upon receipt of a statement
6 signed under penalty of perjury from a law enforcement officer
7 stating the officer's reasonable grounds to believe the
8 arrested person had been driving a motor vehicle within this
9 state while under the influence of intoxicating liquor or
10 [~~drug~~] drugs and that, upon his request, the person refused to
11 submit to a chemical test after being advised that failure to
12 submit could result in revocation of his privilege to drive,
13 shall revoke the person's New Mexico driver's license or any
14 nonresident operating privilege for a period of one year or
15 until all conditions for license reinstatement are met,
16 whichever is later.

17 C. The department, upon receipt of a statement
18 signed under penalty of perjury from a law enforcement officer
19 stating the officer's reasonable grounds to believe the
20 arrested person had been driving a motor vehicle within this
21 state while under the influence of intoxicating liquor and that
22 the person submitted to chemical testing pursuant to Section
23 66-8-107 NMSA 1978 and the test results indicated an alcohol
24 concentration in the person's blood or breath of eight one
25 hundredths or more [~~in the person's blood or breath~~] if the

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1 person is twenty-one years of age or older, four one hundredths
2 or more if the person is driving a commercial motor vehicle or
3 ~~[an alcohol concentration of]~~ two one hundredths or more ~~[in~~
4 ~~the person's blood or breath]~~ if the person is less than
5 twenty-one years of age, shall revoke the person's license or
6 permit to drive or his nonresident operating privilege for a
7 period of:

8 (1) ninety days or until all conditions for
9 license reinstatement are met, whichever is later, if the
10 person is twenty-one years of age or older;

11 (2) six months or until all conditions for
12 license reinstatement are met, whichever is later, if the
13 person is less than twenty-one years of age and has not
14 previously had his license revoked pursuant to the provisions
15 of this section, notwithstanding any provision of the
16 Children's Code; or

17 (3) one year or until all conditions for
18 license reinstatement are met, whichever is later, if the
19 person has previously had his license revoked pursuant to the
20 provisions of this section, notwithstanding the provisions of
21 Paragraph (1) or (2) of this subsection or any provision of the
22 Children's Code.

23 D. The determination of alcohol concentration shall
24 be based on the grams of alcohol in one hundred milliliters of
25 blood or the grams of alcohol in two hundred ten liters of

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1 breath.

2 E. If the person subject to the revocation
3 provisions of this section is a resident or will become a
4 resident within one year and is without a license to operate a
5 motor vehicle in this state, the department shall deny the
6 issuance of a license to him for the appropriate period of time
7 as provided in Subsections B and C of this section.

8 F. A statement signed by a law enforcement officer,
9 pursuant to the provisions of Subsection B or C of this
10 section, shall be sworn to by the officer or shall contain a
11 declaration substantially to the effect: "I hereby declare
12 under penalty of perjury that the information given in this
13 statement is true and correct to the best of my knowledge.". A
14 law enforcement officer who signs a statement, knowing that the
15 statement is untrue in any material issue or matter, is guilty
16 of perjury as provided in Section 66-5-38 NMSA 1978. "

17 Section 14. Section 66-8-111.1 NMSA 1978 (being Laws
18 1984, Chapter 72, Section 7, as amended) is amended to read:

19 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
20 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
21 HEARING.--On behalf of the department, a law enforcement
22 officer requesting a chemical test or directing the
23 administration of a chemical test pursuant to Section 66-8-107
24 NMSA 1978 shall serve immediate written notice of revocation
25 and of right to a hearing on a person who refuses to permit

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1 chemical testing or on a person who submits to a chemical test
2 the results of which indicate an alcohol concentration in the
3 person's blood or breath of eight one hundredths or more [~~in~~
4 ~~the person's blood or breath~~] if the person is twenty-one years
5 of age or older, four one hundredths or more if the person is
6 driving a commercial motor vehicle or [~~an alcohol concentration~~
7 ~~of~~] two one hundredths or more [~~in the person's blood or~~
8 ~~breath~~] if the person is less than twenty-one years of age.
9 Upon serving notice of revocation, the law enforcement officer
10 shall take the license or permit of the driver, if any, and
11 issue a temporary license valid for twenty days or, if the
12 driver requests a hearing pursuant to Section 66-8-112 NMSA
13 1978, valid until the date the department issues the order
14 following that hearing; provided that [~~no~~] a temporary license
15 shall not be issued to a driver without a valid license or
16 permit. The law enforcement officer shall send the person's
17 driver's license to the department along with the signed
18 statement required pursuant to Section 66-8-111 NMSA 1978."

19 Section 15. Section 66-8-112 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 520, as amended) is amended to read:

21 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--
22 NOTICE-- EFFECTIVE DATE-- HEARING-- HEARING COSTS-- REVIEW. --

23 A. The effective date of revocation pursuant to
24 Section 66-8-111 NMSA 1978 is twenty days after notice of
25 revocation or, if the person whose driver's license or

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1 privilege to drive is being revoked or denied requests a
2 hearing pursuant to this section, the date that the department
3 issues the order following that hearing. The date of notice of
4 revocation is:

5 (1) the date the law enforcement officer
6 serves written notice of revocation and of right to a hearing
7 pursuant to Section 66-8-111.1 NMSA 1978; or

8 (2) in the event the results of a chemical
9 test cannot be obtained immediately, the date notice of
10 revocation is served by mail by the department. This notice of
11 revocation and of right to a hearing shall be sent by certified
12 mail and shall be deemed to have been served on the date borne
13 by the return receipt showing delivery, refusal of the
14 addressee to accept delivery or attempted delivery of the
15 notice at the address obtained by the arresting law enforcement
16 officer or on file with the department.

17 B. Within ten days after receipt of notice of
18 revocation pursuant to Subsection A of this section, a person
19 whose license or privilege to drive is revoked or denied or the
20 person's agent may request a hearing. The hearing request
21 shall be made in writing and shall be accompanied by a payment
22 of twenty-five dollars (\$25.00) or a sworn statement of
23 indigency on a form provided by the department. A standard for
24 indigency shall be established pursuant to regulations adopted
25 by the department. Failure to request a hearing within ten

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1 days shall result in forfeiture of the person's right to a
2 hearing. Any person less than eighteen years of age who fails
3 to request a hearing within ten days shall have notice of
4 revocation sent to his parent, guardian or custodian by the
5 department. A date for the hearing shall be set by the
6 department, if practical, within thirty days after receipt of
7 notice of revocation. The hearing shall be held in the county
8 in which the offense for which the person was arrested took
9 place. At the discretion of the department, the hearing may be
10 conducted in person or telephonically.

11 C. The department may postpone or continue any
12 hearing on its own motion or upon application from the person
13 and for good cause shown for a period not to exceed ninety days
14 from the date of notice of revocation and provided that the
15 department extends the validity of the temporary license for
16 the period of the postponement or continuation.

17 D. At the hearing, the department or its agent may
18 administer oaths and may issue subpoenas for the attendance of
19 witnesses and the production of relevant books and papers.

20 E. The hearing shall be limited to the issues:

21 (1) whether the law enforcement officer had
22 reasonable grounds to believe that the person had been driving
23 a motor vehicle within this state while under the influence of
24 intoxicating liquor or drugs;

25 (2) whether the person was arrested;

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1 (3) whether this hearing is held no later than
2 ninety days after notice of revocation; and either

3 (4) whether:

4 (a) [~~whether~~] the person refused to
5 submit to a test upon request of the law enforcement officer;
6 and

7 (b) [~~whether~~] the law enforcement
8 officer advised that the failure to submit to a test could
9 result in revocation of the person's privilege to drive; or

10 (5) whether:

11 (a) [~~whether~~] the chemical test was
12 administered pursuant to the provisions of the Implied Consent
13 Act; and

14 (b) the test results indicated an
15 alcohol concentration in the person's blood or breath of eight
16 one hundredths or more [~~in the person's blood or breath~~] if the
17 person is twenty-one years of age or older, four one hundredths
18 or more if the person is driving a commercial motor vehicle or
19 [~~an alcohol concentration of~~] two one hundredths or more in the
20 person's blood or breath if the person is less than twenty-one
21 years of age.

22 F. The department shall enter an order sustaining
23 the revocation or denial of the person's license or privilege
24 to drive if the department finds that:

25 (1) the law enforcement officer had reasonable

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1 grounds to believe the driver was driving a motor vehicle while
2 under the influence of intoxicating liquor or ~~[drug]~~ drugs;

3 (2) the person was arrested;

4 (3) this hearing is held no later than ninety
5 days after notice of revocation; and

6 (4) either:

7 (a) the person ~~[either]~~ refused to
8 submit to the test upon request of the law enforcement officer
9 after the law enforcement officer advised him that his failure
10 to submit to the test could result in the revocation of his
11 privilege to drive; or

12 (b) that a chemical test was
13 administered pursuant to the provisions of the Implied Consent
14 Act and the test results indicated an alcohol concentration in
15 the person's blood or breath of eight one hundredths or more if
16 the person is twenty-one years of age or older, four one
17 hundredths or more if the person is driving a commercial motor
18 vehicle or ~~[an alcohol concentration of]~~ two one hundredths or
19 more if the person is less than twenty-one years of age.

20 G. If one or more of the elements set forth in
21 Paragraphs (1) through (4) of ~~[this]~~ Subsection F of this
22 section are not found by the department, the person's license
23 shall not be revoked.

24 ~~[G.]~~ H. A person adversely affected by an order of
25 the department may seek review within thirty days in the

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1 district court in the county in which the offense for which the
2 person was arrested took place. The district court, upon
3 thirty days' written notice to the department, shall hear the
4 case. On review, it is for the court to determine only whether
5 reasonable grounds exist for revocation or denial of the
6 person's license or privilege to drive based on the record of
7 the administrative proceeding.

8 [H-] I. Any person less than eighteen years of age
9 shall have results of his hearing forwarded by the department
10 to his parent, guardian or custodian. "

11 Section 16. Section 66-8-116 NMSA 1978 (being Laws 1978,
12 Chapter 35, Section 524, as amended) is amended to read:

13 "66-8-116. PENALTY ASSESSMENT MISDEMEANORS-- DEFINITION--
14 SCHEDULE OF ASSESSMENTS. --

15 A. As used in the Motor Vehicle Code, "penalty
16 assessment misdemeanor" means violation of any of the following
17 listed sections of the NMSA 1978 for which, except as provided
18 in Subsection D of this section, the listed penalty assessment
19 is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
		ASSESSMENT
Permitting unlicensed		
minor to drive	66- 5- 40	\$ 10. 00
Failure to obey sign	66- 7- 104	10. 00
Failure to obey signal	66- 7- 105	10. 00

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1	Speeding	66- 7- 301	
2	(1) up to and including		
3	ten miles an hour		
4	over the speed limit		15. 00
5	(2) from eleven up to		
6	and including fifteen		
7	miles an hour		
8	over the speed limit		30. 00
9	(3) from sixteen up to		
10	and including twenty		
11	miles an hour over the		
12	speed limit		65. 00
13	(4) from twenty-one up to		
14	and including twenty-five		
15	miles an hour		
16	over the speed limit		100. 00
17	(5) from twenty-six up to		
18	and including thirty		
19	miles an hour over the		
20	speed limit		125. 00
21	(6) from thirty-one up to		
22	and including thirty-five		
23	miles an hour over the		
24	speed limit		150. 00
25	(7) more than thirty-five		

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1	miles an hour over the		
2	speed limit		200.00
3	Unfastened safety belt	66-7-372	25.00
4	Child not in restraint device		
5	or seat belt	66-7-369	25.00
6	Minimum speed	66-7-305	10.00
7	Speeding	66-7-306	15.00
8	Improper starting	66-7-324	10.00
9	Improper backing	66-7-354	10.00
10	Improper lane	66-7-308	10.00
11	Improper lane	66-7-313	10.00
12	Improper lane	66-7-316	10.00
13	Improper lane	66-7-317	10.00
14	Improper lane	66-7-319	10.00
15	Improper passing	66-7-309 through 66-7-312	10.00
16	Improper passing	66-7-315	10.00
17	Controlled access		
18	violation	66-7-320	10.00
19	Controlled access		
20	violation	66-7-321	10.00
21	Improper turning	66-7-322	10.00
22	Improper turning	66-7-323	10.00
23	Improper turning	66-7-325	10.00
24	Following too closely	66-7-318	10.00
25	Failure to yield	66-7-328 through 66-7-332	10.00

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1	Failure to yield	66- 7- 332. 1	25. 00
2	Pedestrian violation	66- 7- 333	10. 00
3	Pedestrian violation	66- 7- 340	10. 00
4	[Failure to stop	66- 7- 341 through 66- 7- 346	10. 00]
5	<u>Failure to stop</u>	<u>66- 7- 342 and 66- 7- 344</u>	
6		<u>through 66- 7- 346</u>	<u>10. 00</u>
7	<u>Railroad- highway grade</u>		
8	<u>crossing violation</u>	<u>66- 7- 341 and 66- 7- 343</u>	<u>10. 00</u>
9	Passing school bus	66- 7- 347	100. 00
10	Failure to signal	66- 7- 325 through 66- 7- 327	10. 00
11	Failure to secure load	66- 7- 407	100. 00
12	Operation without oversize-		
13	overweight permit	66- 7- 413	50. 00
14	Improper equipment	66- 3- 801	10. 00
15	Improper equipment	66- 3- 901	20. 00
16	Improper emergency		
17	signal	66- 3- 853 through 66- 3- 857	10. 00
18	Operation interference	66- 7- 357	5. 00
19	Littering	66- 7- 364	300. 00
20	Improper parking	66- 7- 349 through 66- 7- 352	
21		and 66- 7- 353	5. 00
22	Improper parking	66- 7- 352. 5	50. 00
23	Improper parking	66- 3- 852	5. 00
24	Failure to dim lights	66- 3- 831	10. 00
25	Riding in or towing		

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1	occupied house trailer	66- 7- 366	5. 00
2	Improper opening of doors	66- 7- 367	5. 00
3	No slow-moving vehicle		
4	emblem or flashing		
5	amber light	66- 3- 887	5. 00
6	Open container - first		
7	violation	66- 8- 138	25. 00.

8 B. The term "penalty assessment misdemeanor" does not
9 include a violation that has caused or contributed to the cause
10 of an accident resulting in injury or death to a person.

11 C. When an alleged violator of a penalty assessment
12 misdemeanor elects to accept a notice to appear in lieu of a
13 notice of penalty assessment, [no] a fine imposed upon later
14 conviction shall not exceed the penalty assessment established
15 for the particular penalty assessment misdemeanor and [no]
16 probation imposed upon a suspended or deferred sentence shall
17 not exceed ninety days.

18 D. The penalty assessment for speeding in violation
19 of Paragraph (4) of Subsection A of Section 66- 7- 301 NMSA 1978
20 is twice the penalty assessment established in Subsection A of
21 this section for the equivalent miles per hour over the speed
22 limit."

23 Section 17. EMERGENCY.--It is necessary for the public
24 peace, health and safety that this act take effect immediately.